

# **Exhibit AO**

ELENA CHERNENKO  
ZEIKOS INC. vs WALGREEN

May 11, 2023

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Page 1		Page 3	
1	IN THE UNITED STATES DISTRICT COURT	1	I N D E X
2	FOR THE NORTHERN DISTRICT OF ILLINOIS	2	EXAMINATION
3	ZEIKOS INC., )	3	EXAMINATION BY MR. DUNNEGAN
4	)	4	
5	Plaintiff, )	5	
6	)	6	E X H I B I T S
7	v. ) Case No. 1:23-cv-00303	7	NUMBER DESCRIPTION PAGE
8	) (VMK) (SEC)	8	PLF Ex. No. 309 Email from Jason Santiago to James Trappani dated 4/17/19 at 1:30 p.m. 8
9	)	9	PLF Ex. No. 310 Email from Elena Chernenko to James Trappani dated 4/17/19 at 2:23 p.m. 23
10	WALGREEN CO., )	10	PLF Ex. No. 310D Excel spreadsheet 28
11	)	11	PLF Ex. No. 310A Excel spreadsheet 29
12	Defendant. )	12	PLF Ex. No. 310B Supplier Requirements 33
13		13	PLF Ex. No. 310C Excel spreadsheet 33
14	DEPOSITION OF	14	PLF Ex. No. 311 Email from James Trappani to Elena Chernenko and others dated 4/17/19 at 4:04 p.m. 45
15	ELENA CHERNENKO	15	
16	May 11, 2023	16	
17	9:00 a.m. CST	17	PLF Ex. No. 313 Email from Jack Saideh to Elena Chernenko and others dated 4/24/19 at 6:57 p.m. 47
18		18	
19	104 Wilmot Road	19	PLF Ex. No. 315 Email from Elena Chernenko to Jack Saideh and others dated 4/30/19 at 3:29 p.m. 48
20	Deerfield, Illinois	20	
21		21	PLF Ex. No. 315A Excel spreadsheet 49
22		22	PLF Ex. No. 318 Email from Elena Chernenko to Jason Santiago and others dated 5/3/19 at 12:20 p.m. 52
23	Reported by: Nickey Brummel, C.S.R.	23	
24		24	
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1	A P P E A R A N C E S:	1	PLF Ex. No. 318A Excel spreadsheet 57
2	DUNNEGAN & SCILEPPI LLC	2	PLF Ex. No. 9 Email from James Trappani to Elena Chernenko and others dated 5/3/19 at 1:30 p.m. 63
3	437 Madison Avenue, 24th Floor	3	
4	New York, New York 10022	4	
5	(212) 332-8300	5	
6	wd@dunnegan.com	6	
7	ls@dunnegan.com	7	****EXHIBITS NOT ATTACHED****
8	BY: MR. WILLIAM DUNNEGAN (pro hac vice)(via Zoom)	8	
9	MS. LAURA SCILEPPI (pro hac vice)(via Zoom)	9	
10		10	
11	Appeared on behalf of the Plaintiff;	11	
12		12	
13	A & G LAW LLC	13	
14	542 South Dearborn Street, 10th Floor	14	
15	Chicago, Illinois 60605	15	
16	(312) 341-1356	16	
17	rblackburn@AndGlaw.com	17	
18	BY: MS. RACHAEL B. BLACKBURN	18	
19	Appeared on behalf of the Defendant.	19	
20		20	
21	ALSO PRESENT: Mr. Darin Osmond	21	
22	Senior Counsel, Walgreen Co.	22	
23		23	
24	Reported by: Nickey Brummel, CSR No. 084-002679	24	

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<p style="text-align: right;">Page 21</p> <p>1 BY MR. DUNNEGAN:</p> <p>2 Q. Okay. When you say you saw it as part of the</p> <p>3 email communication, do you mean in preparation for</p> <p>4 today's deposition?</p> <p>5 A. Yes.</p> <p>6 Q. Is it fair to say that before preparation of</p> <p>7 today's deposition you had never heard of the term</p> <p>8 "SBT"?</p> <p>9 A. I definitely heard that as part of my previous</p> <p>10 line of work but I've supported hundreds of projects at</p> <p>11 that time so it's difficult to recall.</p> <p>12 Q. Do you know whether or not SBT refers to</p> <p>13 scan-based trading?</p> <p>14 A. That sounds right.</p> <p>15 Q. Have you ever heard of a situation in which</p> <p>16 Walgreen has sold a vendor space in its stores for which</p> <p>17 the vendor would be subject to a program called</p> <p>18 scan-based trading?</p> <p>19 MS. BLACKBURN: Object to form and foundation.</p> <p>20 BY THE WITNESS:</p> <p>21 A. I did not. As I said, my group was not</p> <p>22 involved with that side of the business.</p> <p>23 BY MR. DUNNEGAN:</p> <p>24 Q. Okay. Now, as of April of 2019, was Walgreen</p>	<p style="text-align: right;">Page 23</p> <p>1 BY THE WITNESS:</p> <p>2 A. I definitely do not recall.</p> <p>3 MR. DUNNEGAN: You're right. Excuse me. I'll</p> <p>4 withdraw that question.</p> <p>5 BY MR. DUNNEGAN:</p> <p>6 Q. Do you have any recollection of what those</p> <p>7 specifications for the Infinitive products involved?</p> <p>8 A. I do not have any recollection.</p> <p>9 Q. Now, if I could take you back to Exhibit 309.</p> <p>10 Do you have any recollection of being asked to contact</p> <p>11 Zeikos in connection with the Infinitive program?</p> <p>12 A. No, but I saw the email in front of me.</p> <p>13 MR. DUNNEGAN: Now, if I could ask the court</p> <p>14 reporter to place in front of you Exhibit 310.</p> <p>15 (WHEREUPON, Plaintiff's Deposition</p> <p>16 Exhibit No. 310 was introduced into</p> <p>17 the record.)</p> <p>18 MS. BLACKBURN: The witness has Exhibit 310.</p> <p>19 BY MR. DUNNEGAN:</p> <p>20 Q. Do you know what Exhibit 310 is?</p> <p>21 A. An email communication.</p> <p>22 Q. Did you send the last email communication in</p> <p>23 the chain?</p> <p>24 A. Yes, I did.</p>
<p style="text-align: right;">Page 22</p> <p>1 interested in changing the way that it acquired the</p> <p>2 Infinitive products?</p> <p>3 MS. BLACKBURN: Object to form and foundation.</p> <p>4 BY THE WITNESS:</p> <p>5 A. I do not recall.</p> <p>6 BY MR. DUNNEGAN:</p> <p>7 Q. Do you know whether or not Walgreen had had</p> <p>8 any specifications for the Infinitive brand products?</p> <p>9 MS. BLACKBURN: Object to form.</p> <p>10 BY THE WITNESS:</p> <p>11 A. As part of any inquiry, that team would always</p> <p>12 have specifications based on the current product.</p> <p>13 BY MR. DUNNEGAN:</p> <p>14 Q. And were you involved in reviewing those</p> <p>15 specifications in any way?</p> <p>16 A. Yes. Mostly an administrative function. I</p> <p>17 was not a --</p> <p>18 Q. When you say "administrative" --</p> <p>19 A. Mm-hmm. I was not a sourcing manager for the</p> <p>20 category. My role was more project specific in a</p> <p>21 supportive function to sourcing managers.</p> <p>22 Q. Do you have any recollection of what those</p> <p>23 specifications for the Infinitive product would involve?</p> <p>24 MS. BLACKBURN: Object to form and foundation.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. And you sent it to Jim Trappani at Zeikos,</p> <p>2 right?</p> <p>3 A. Yes.</p> <p>4 Q. Now, if we look to the second email in the</p> <p>5 chain which starts at the bottom of the first page of</p> <p>6 the exhibit, did you also send that email?</p> <p>7 A. Yes.</p> <p>8 Q. Who did you send that email to?</p> <p>9 A. It looks like it was just sent to Jason</p> <p>10 Santiago. But it's just a generic email spit out by our</p> <p>11 SAP system.</p> <p>12 Q. When you say it's a generic email, what do you</p> <p>13 mean?</p> <p>14 A. Meaning like it's automated -- from the looks</p> <p>15 of it, it's just an automated summary based on our</p> <p>16 project management tool.</p> <p>17 Q. So you didn't send the email which is the</p> <p>18 second in the chain on Exhibit 310 which is dated</p> <p>19 April 10, 2019 at 2:12 p.m. to anyone other than Jason</p> <p>20 Santiago; is that correct?</p> <p>21 MS. BLACKBURN: Object to form and foundation.</p> <p>22 BY THE WITNESS:</p> <p>23 A. I am not sure at this point.</p> <p>24</p>

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<p style="text-align: right;">Page 25</p> <p>1 BY MR. DUNNEGAN:</p> <p>2 Q. You have at this point no recollection of</p> <p>3 sending this to anyone other than Mr. Trappani at</p> <p>4 Zeikos, correct?</p> <p>5 MS. BLACKBURN: Object to form and foundation.</p> <p>6 BY THE WITNESS:</p> <p>7 A. I only see what's in front of me but I have no</p> <p>8 recollection of that.</p> <p>9 BY MR. DUNNEGAN:</p> <p>10 Q. Do you have any recollection if other</p> <p>11 companies were asked to bid on this Infinitive program?</p> <p>12 A. I do not.</p> <p>13 Q. You can't remember anyone other than Zeikos</p> <p>14 who was asked to bid on this program?</p> <p>15 MS. BLACKBURN: Object to form.</p> <p>16 BY THE WITNESS:</p> <p>17 A. Correct. As I said, it was a supportive</p> <p>18 function so I wasn't involved in the entire project.</p> <p>19 BY MR. DUNNEGAN:</p> <p>20 Q. Was someone else involved in soliciting</p> <p>21 vendors to bid on the Infinitive program in this</p> <p>22 timeframe?</p> <p>23 A. I'm sure but I'm not sure who that would be.</p> <p>24 Q. How many people were in your group at that</p>	<p style="text-align: right;">Page 27</p> <p>1 BY MR. DUNNEGAN:</p> <p>2 Q. Now, Exhibit 310 has attachments to it. Can</p> <p>3 you see that from the top of the document?</p> <p>4 A. Yes, I can.</p> <p>5 Q. Do you know what the attachments were?</p> <p>6 MS. BLACKBURN: Object to form.</p> <p>7 BY THE WITNESS:</p> <p>8 A. It looks like a sales data for the last</p> <p>9 52 weeks and our shrink and waste data and inventory.</p> <p>10 BY MR. DUNNEGAN:</p> <p>11 Q. Now, from any of these exhibits, do you know</p> <p>12 whether or not the recipient of your email could have</p> <p>13 determined the volume of each SKU that Walgreen sold</p> <p>14 under the Infinitive brand name in its stores?</p> <p>15 MS. BLACKBURN: Object to form and foundation.</p> <p>16 BY THE WITNESS:</p> <p>17 A. So this sort of data only stand as I guess a</p> <p>18 directional approximate volumes or information because</p> <p>19 it would never be exactly the same product, so we can</p> <p>20 never really predict the sales. It is not a national</p> <p>21 brand item; it's a private label. So they're not</p> <p>22 created equal. Any version of the same cord or charger</p> <p>23 would have slight differences visually and in terms of</p> <p>24 sales, so it's difficult to predict.</p>
<p style="text-align: right;">Page 26</p> <p>1 time that performed a function that included soliciting</p> <p>2 vendors to bid on programs?</p> <p>3 MS. BLACKBURN: Object to form.</p> <p>4 BY THE WITNESS:</p> <p>5 A. Probably six for this particular space.</p> <p>6 BY MR. DUNNEGAN:</p> <p>7 Q. Do you have any understanding of why you were</p> <p>8 asked to communicate with Zeikos?</p> <p>9 MS. BLACKBURN: Object to form and foundation.</p> <p>10 BY THE WITNESS:</p> <p>11 A. Yes. My function was supportive so I was</p> <p>12 helping senior sourcing managers to run their projects</p> <p>13 and I just jumped in and out of the activity as needed.</p> <p>14 I did not have a full picture of the project or the goal</p> <p>15 for the category.</p> <p>16 BY MR. DUNNEGAN:</p> <p>17 Q. Now, between the time that you were instructed</p> <p>18 to send an email to Zeikos and the time that you did</p> <p>19 send an email to Zeikos, do you recall having any</p> <p>20 discussions with anyone concerning Zeikos?</p> <p>21 MS. BLACKBURN: Object to form.</p> <p>22 BY THE WITNESS:</p> <p>23 A. No.</p> <p>24</p>	<p style="text-align: right;">Page 28</p> <p>1 BY MR. DUNNEGAN:</p> <p>2 Q. Well, my question was really if someone looked</p> <p>3 at the attachments to the Exhibit 310, would that</p> <p>4 individual be able to determine the amount of Walgreen's</p> <p>5 sales of each of the Infinitive products by SKU for any</p> <p>6 period of time?</p> <p>7 MS. BLACKBURN: Object to form and foundation.</p> <p>8 She hasn't seen the exhibits.</p> <p>9 BY THE WITNESS:</p> <p>10 A. I don't have the report in front of me but it</p> <p>11 does give an overview how our current product sells.</p> <p>12 MR. DUNNEGAN: Okay. Well, what I'm going to</p> <p>13 do is ask the court reporter to show you what's</p> <p>14 been marked as Exhibit 310D.</p> <p>15 (WHEREUPON, Plaintiff's Deposition</p> <p>16 Exhibit No. 310D was introduced into</p> <p>17 the record.)</p> <p>18 MR. DUNNEGAN: And while you're taking a look</p> <p>19 at that one, I am going to send an email to both</p> <p>20 your attorney and our court reporter which has</p> <p>21 those exhibits in it because they are really not</p> <p>22 capable of being reduced to paper, for the most</p> <p>23 part. So I'll do that right now.</p> <p>24 MS. BLACKBURN: Bill, do you mind dropping them</p>

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<p style="text-align: right;">Page 29</p> <p>1 into the chat? I prefer to not open my email,</p> <p>2 because then it shows up. Are you able to just</p> <p>3 drop it into the chat?</p> <p>4 MR. DUNNEGAN: Honestly, I don't know how to</p> <p>5 drop it into the chat. Can we go off the record</p> <p>6 for a moment?</p> <p>7 MS. BLACKBURN: Yes, let's go off the record.</p> <p>8 (WHEREUPON, discussion was had</p> <p>9 off the record.)</p> <p>10 (WHEREUPON, Plaintiff's Deposition</p> <p>11 Exhibit No. 310A was introduced into</p> <p>12 the record.)</p> <p>13 BY MR. DUNNEGAN:</p> <p>14 Q. Are you taking a look at Plaintiff's Exhibit</p> <p>15 310A?</p> <p>16 MS. BLACKBURN: Not yet. If you'd like to</p> <p>17 direct the witness to look at a specific exhibit,</p> <p>18 let me know and I will pull that up.</p> <p>19 MR. DUNNEGAN: Please. If you could please</p> <p>20 take a look at Exhibit 310A.</p> <p>21 MS. BLACKBURN: Do you need it bigger?</p> <p>22 THE WITNESS: Um...</p> <p>23 MS. BLACKBURN: Sorry. We're split-screening</p> <p>24 here. 310A, it's a -- just for clarification,</p>	<p style="text-align: right;">Page 31</p> <p>1 mean in that column?</p> <p>2 MS. BLACKBURN: Object to form and foundation.</p> <p>3 BY THE WITNESS:</p> <p>4 A. In simple words, it's basically the number of</p> <p>5 the SKU or the item.</p> <p>6 BY MR. DUNNEGAN:</p> <p>7 Q. Okay. So planogram number means the SKU or</p> <p>8 the item?</p> <p>9 A. Yes. So the 40,000 is just an indication</p> <p>10 number for Walgreens. It's the same across the board.</p> <p>11 310D number that comes after 40,000 is the number of the</p> <p>12 product.</p> <p>13 Q. Okay. And what does the next column, I</p> <p>14 believe it's "Pln Desc," mean?</p> <p>15 MS. BLACKBURN: Object to form and foundation.</p> <p>16 BY THE WITNESS:</p> <p>17 A. It's a description of the item.</p> <p>18 BY MR. DUNNEGAN:</p> <p>19 Q. 310D brand name appears to be Infinitive in</p> <p>20 Column D?</p> <p>21 A. Yes.</p> <p>22 Q. 310D unit sales are the sales by product for</p> <p>23 that store?</p> <p>24 MS. BLACKBURN: Object to form and foundation.</p>
<p style="text-align: right;">Page 30</p> <p>1 that's a spreadsheet; is that correct, Bill?</p> <p>2 MR. DUNNEGAN: Yes, it's an Excel spreadsheet.</p> <p>3 MS. BLACKBURN: Okay.</p> <p>4 BY MR. DUNNEGAN:</p> <p>5 Q. Now, what I'd like to do is to review the</p> <p>6 header rows at the top. Do you see the first one? It's</p> <p>7 apparently store number?</p> <p>8 A. Yes, I see it.</p> <p>9 Q. Okay. And I'm sorry. I'm on the tab which</p> <p>10 says, "Store WIC Sales."</p> <p>11 A. Okay.</p> <p>12 MS. BLACKBURN: We're also on that.</p> <p>13 MR. DUNNEGAN: Okay. Good.</p> <p>14 BY MR. DUNNEGAN:</p> <p>15 Q. Now, the store number, that's just a number</p> <p>16 for a Walgreen store? Every store has a number?</p> <p>17 MS. BLACKBURN: Object to form and foundation.</p> <p>18 BY THE WITNESS:</p> <p>19 A. Yes.</p> <p>20 BY MR. DUNNEGAN:</p> <p>21 Q. Now, the next column says, "Pln Nbr." Do you</p> <p>22 know what that means?</p> <p>23 A. Yes, I do. It's planogram number.</p> <p>24 Q. And do you know what those planogram numbers</p>	<p style="text-align: right;">Page 32</p> <p>1 BY THE WITNESS:</p> <p>2 A. Yes, it looks like that.</p> <p>3 BY MR. DUNNEGAN:</p> <p>4 Q. Okay. Now, if we could look at the other tab</p> <p>5 in that spreadsheet where it says at the bottom "PLN</p> <p>6 Sales Volume"?</p> <p>7 A. Okay. I'm looking at it.</p> <p>8 Q. Okay. Again, I would like to go over the top</p> <p>9 row of descriptions in Columns A, B, and C. Again, "Pln</p> <p>10 Nbr" refers to what?</p> <p>11 MS. BLACKBURN: Object to form and foundation.</p> <p>12 BY THE WITNESS:</p> <p>13 A. Planogram number. The item number.</p> <p>14 BY MR. DUNNEGAN:</p> <p>15 Q. Okay. 310D next column is Planogram</p> <p>16 Description. That's a description of the item?</p> <p>17 A. Yes. Correct.</p> <p>18 Q. 310D Sum of Sales Units refers to sales during</p> <p>19 what period of time?</p> <p>20 MS. BLACKBURN: Object to form and foundation.</p> <p>21 BY THE WITNESS:</p> <p>22 A. I'm not sure what the duration of this report</p> <p>23 is.</p> <p>24</p>

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<p style="text-align: right;">Page 33</p> <p>1 (WHEREUPON, Plaintiff's Deposition</p> <p>2 Exhibit No. 310B was introduced into</p> <p>3 the record.)</p> <p>4 MR. DUNNEGAN: Okay. Now, if we could take a</p> <p>5 look at the next exhibit which would be 310B.</p> <p>6 MS. BLACKBURN: That's the PDF; is that right?</p> <p>7 MR. DUNNEGAN: It is, yes.</p> <p>8 MS. BLACKBURN: She's got it up. Thank you.</p> <p>9 BY MR. DUNNEGAN:</p> <p>10 Q. What is Exhibit 310B?</p> <p>11 MS. BLACKBURN: Object to form and foundation.</p> <p>12 BY THE WITNESS:</p> <p>13 A. It's the quality requirements from the</p> <p>14 supplier.</p> <p>15 BY MR. DUNNEGAN:</p> <p>16 Q. And this tells nothing about Walgreen's sales</p> <p>17 of any Infinitive products, correct?</p> <p>18 MS. BLACKBURN: Object to form.</p> <p>19 BY THE WITNESS:</p> <p>20 A. It looks like it's just the standard form.</p> <p>21 (WHEREUPON, Plaintiff's Deposition</p> <p>22 Exhibit No. 310C was introduced into</p> <p>23 the record.)</p> <p>24</p>	<p style="text-align: right;">Page 35</p> <p>1 BY THE WITNESS:</p> <p>2 A. So shrink is showcasing the amount of the</p> <p>3 product that disappears off the shelf or pretty much</p> <p>4 theft from the store.</p> <p>5 BY MR. DUNNEGAN:</p> <p>6 Q. And Column C, "Shrink \$," is in the dollar</p> <p>7 amount of the shrink?</p> <p>8 A. Yes.</p> <p>9 MS. BLACKBURN: Object to form and foundation.</p> <p>10 BY MR. DUNNEGAN:</p> <p>11 Q. And Column D says, "Shrink Units." What does</p> <p>12 that refer to?</p> <p>13 MS. BLACKBURN: Object to form and foundation.</p> <p>14 BY THE WITNESS:</p> <p>15 A. Number of units.</p> <p>16 BY MR. DUNNEGAN:</p> <p>17 Q. Okay. Now, if we look at Column F it says,</p> <p>18 "Nbr of Stores with Shrink Activity." Do you see that?</p> <p>19 BY THE WITNESS:</p> <p>20 A. Yes, I do.</p> <p>21 BY MR. DUNNEGAN:</p> <p>22 Q. Now, in the top, for example, Row No. 3 has</p> <p>23 4,986 stores with shrink activity. Do you see that?</p> <p>24 A. Yes, I do.</p>
<p style="text-align: right;">Page 34</p> <p>1 BY MR. DUNNEGAN:</p> <p>2 Q. And then calling your attention to Plaintiff's</p> <p>3 Exhibit 310C which is another Excel spreadsheet. Tell</p> <p>4 me when you have that one up.</p> <p>5 A. We have it up.</p> <p>6 Q. Okay. Now, under the tab "Shrink Data</p> <p>7 52 Weeks," do you see that tab?</p> <p>8 A. I do see that.</p> <p>9 Q. Okay. 310D columns at the top, we have "PLN</p> <p>10 (Actuals)." What does that mean?</p> <p>11 MS. BLACKBURN: Object to form and foundation.</p> <p>12 BY THE WITNESS:</p> <p>13 A. It's the same thing as the planogram number in</p> <p>14 the previous report.</p> <p>15 BY MR. DUNNEGAN:</p> <p>16 Q. 310D description is obviously the description</p> <p>17 of the product?</p> <p>18 A. Correct.</p> <p>19 MS. BLACKBURN: Object to form and foundation.</p> <p>20 BY MR. DUNNEGAN:</p> <p>21 Q. Is that right?</p> <p>22 A. Yes, that is right.</p> <p>23 Q. What does "Shrink \$" mean?</p> <p>24 MS. BLACKBURN: Object to form and foundation.</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Now, when we move our way down the</p> <p>2 spreadsheet, for example, if we go to Row 122, we're</p> <p>3 seeing zeros all the way across the row. Does that mean</p> <p>4 that product was not at that store?</p> <p>5 MS. BLACKBURN: Object to form and foundation.</p> <p>6 BY THE WITNESS:</p> <p>7 A. Honestly, I do not recall.</p> <p>8 BY MR. DUNNEGAN:</p> <p>9 Q. I'm sorry. I didn't understand your answer.</p> <p>10 A. I do not recall --</p> <p>11 Q. I didn't hear your answer.</p> <p>12 A. Oh, you didn't hear it?</p> <p>13 Q. Yes.</p> <p>14 A. I do not recall what that means.</p> <p>15 MS. BLACKBURN: Can you hear us now, Bill?</p> <p>16 MR. DUNNEGAN: Yes.</p> <p>17 MS. BLACKBURN: Okay.</p> <p>18 BY MR. DUNNEGAN:</p> <p>19 Q. Now, that was Exhibit 310C. If I could take</p> <p>20 you to Exhibit 310D which is on paper.</p> <p>21 A. I see it.</p> <p>22 Q. Now, if we look at that document, the column</p> <p>23 on the left is PLN (Actuals). Again that's the product</p> <p>24 description or number?</p>

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<p style="text-align: right;">Page 37</p> <p>1 MS. BLACKBURN: Object to form and foundation.</p> <p>2 BY THE WITNESS:</p> <p>3 A. Yes, it is.</p> <p>4 BY MR. DUNNEGAN:</p> <p>5 Q. And then the column "Description," what does</p> <p>6 that mean?</p> <p>7 MS. BLACKBURN: Object to form and foundation.</p> <p>8 BY THE WITNESS:</p> <p>9 A. It's the item description.</p> <p>10 BY MR. DUNNEGAN:</p> <p>11 Q. Okay. Now, the next column is "FY Budget."</p> <p>12 What does that mean?</p> <p>13 MS. BLACKBURN: Object to form and foundation.</p> <p>14 BY THE WITNESS:</p> <p>15 A. I do not remember what it meant in this</p> <p>16 particular report.</p> <p>17 BY MR. DUNNEGAN:</p> <p>18 Q. 310D next column is "Total IOH Units." Do you</p> <p>19 know what that means?</p> <p>20 A. IOH stands for inventory on hand.</p> <p>21 Q. So the total IOH units would show the number</p> <p>22 of actual products that Walgreen had in all of its</p> <p>23 stores?</p> <p>24 MS. BLACKBURN: Object to form and foundation.</p>	<p style="text-align: right;">Page 39</p> <p>1 determine the amount of sales of Infinitive brand</p> <p>2 products by Walgreen in its stores during any time</p> <p>3 period?</p> <p>4 MS. BLACKBURN: Object to form.</p> <p>5 BY THE WITNESS:</p> <p>6 A. Can you repeat that question again?</p> <p>7 MR. DUNNEGAN: Nickey, could you please read it</p> <p>8 back?</p> <p>9 (WHEREUPON, the record was read</p> <p>10 as requested.)</p> <p>11 MS. BLACKBURN: Same objection.</p> <p>12 BY THE WITNESS:</p> <p>13 A. It could determine the sales volumes, not the</p> <p>14 sales dollars.</p> <p>15 BY MR. DUNNEGAN:</p> <p>16 Q. How would one determine the sales volumes?</p> <p>17 A. The sales units on the document that's shared</p> <p>18 on the screen.</p> <p>19 THE WITNESS: The other document.</p> <p>20 BY THE WITNESS:</p> <p>21 A. Represents that.</p> <p>22 BY MR. DUNNEGAN:</p> <p>23 Q. Which one is that?</p> <p>24 THE WITNESS: What's the number on this?</p>
<p style="text-align: right;">Page 38</p> <p>1 BY THE WITNESS:</p> <p>2 A. That number represents how much inventory we</p> <p>3 have of the particular item described on this report.</p> <p>4 BY MR. DUNNEGAN:</p> <p>5 Q. Okay. So the total items that you have in</p> <p>6 inventory shown on the report marked as Exhibit 310D are</p> <p>7 in the upper right-hand quadrant of the document and</p> <p>8 appear to be 164,247,341 items; is that correct?</p> <p>9 A. That is the number I see on the report as</p> <p>10 well.</p> <p>11 Q. Now, from any of these exhibits, 310A, 310B,</p> <p>12 310C, and 310D, could anyone determine the dollar amount</p> <p>13 of Infinitive brand products Walgreen sold in its stores</p> <p>14 during any time period?</p> <p>15 MS. BLACKBURN: Object to form and foundation.</p> <p>16 BY THE WITNESS:</p> <p>17 A. The data only refers to -- I'm not sure what</p> <p>18 is the period on the data described in this conversation</p> <p>19 but it only determines the inventory and potential</p> <p>20 volumes of the particular PLN described on the report,</p> <p>21 not of any other modification of similar products.</p> <p>22 BY MR. DUNNEGAN:</p> <p>23 Q. Okay. So it's correct then that no one could</p> <p>24 look at the documents marked 310A, B, C, and D and</p>	<p style="text-align: right;">Page 40</p> <p>1 MS. BLACKBURN: I can't tell the number.</p> <p>2 THE WITNESS: If you go down and like hover</p> <p>3 over it. To the Excel document.</p> <p>4 MS. BLACKBURN: Thank you. There's two open.</p> <p>5 I think it's A.</p> <p>6 Elena is much better at Excel than I am.</p> <p>7 BY THE WITNESS:</p> <p>8 A. It's the one that have PLN volumes and some of</p> <p>9 sales units, in the Tab 1.</p> <p>10 BY MR. DUNNEGAN:</p> <p>11 Q. And what time period does that exhibit refer</p> <p>12 to?</p> <p>13 MS. BLACKBURN: Object to form and foundation.</p> <p>14 BY THE WITNESS:</p> <p>15 A. It does not specify on this particular report.</p> <p>16 BY MR. DUNNEGAN:</p> <p>17 Q. And there's no way from any of the exhibits</p> <p>18 that we've looked at, 310A, B, C, and D, to determine</p> <p>19 the amount in dollars that any of these units sold for,</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. And to the best of your understanding, could</p> <p>23 anyone have looked at the attachments that you provided</p> <p>24 with this email, 310A, B, C, and D, and determined the</p>



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<p style="text-align: right;">Page 41</p> <p>1 amount of sales of Infinitive products by unit from any</p> <p>2 particular place in a Walgreen store?</p> <p>3 MS. BLACKBURN: Object to form and foundation.</p> <p>4 BY THE WITNESS:</p> <p>5 A. I'm not sure.</p> <p>6 BY MR. DUNNEGAN:</p> <p>7 Q. You wouldn't have any way of doing it?</p> <p>8 MS. BLACKBURN: Same objections.</p> <p>9 BY THE WITNESS:</p> <p>10 A. Without making just an estimation.</p> <p>11 BY MR. DUNNEGAN:</p> <p>12 Q. Okay. How would you make an estimation?</p> <p>13 A. Probably just looking at the volumes 310D</p> <p>14 percentages of shrink and waste communicated.</p> <p>15 Q. What do the percentages of shrink and waste</p> <p>16 communicated tell you about where in the store Walgreen</p> <p>17 sold each of these products from?</p> <p>18 MS. BLACKBURN: Object to form.</p> <p>19 BY THE WITNESS:</p> <p>20 A. It does not tell me location of the product in</p> <p>21 the store.</p> <p>22 BY MR. DUNNEGAN:</p> <p>23 Q. Okay. Now, going back to 310A, is there</p> <p>24 anything in that spreadsheet that you can discern --</p>	<p style="text-align: right;">Page 43</p> <p>1 BY THE WITNESS:</p> <p>2 A. No.</p> <p>3 MS. BLACKBURN: We've been going about an hour.</p> <p>4 Do you mind if we take a quick five-minute break?</p> <p>5 MR. DUNNEGAN: Whenever you want to take a</p> <p>6 break, we'll take a break.</p> <p>7 MS. BLACKBURN: All right. Let's take a break,</p> <p>8 please.</p> <p>9 MR. DUNNEGAN: Let's go off the record.</p> <p>10 (WHEREUPON, discussion was had</p> <p>11 off the record.)</p> <p>12 BY MR. DUNNEGAN:</p> <p>13 Q. Could I call your attention back to</p> <p>14 Exhibit 310C. That's an Excel spreadsheet. Please tell</p> <p>15 me when you have it.</p> <p>16 MS. BLACKBURN: She's got it up with the first</p> <p>17 tab up.</p> <p>18 BY MR. DUNNEGAN:</p> <p>19 Q. Okay. And the first tab is "Shrink Data, 52</p> <p>20 Weeks"?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Now, if we look at Cell C2 where it</p> <p>23 says, "\$1,644,170," do you see that?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 42</p> <p>1 MS. BLACKBURN: Give me one second to make sure</p> <p>2 I have that one up.</p> <p>3 MR. DUNNEGAN: It's the one we just looked at.</p> <p>4 It should be there.</p> <p>5 MS. BLACKBURN: Which tab?</p> <p>6 MR. DUNNEGAN: The tab which at the bottom</p> <p>7 says, "PLN Sales Volume."</p> <p>8 MS. BLACKBURN: Okay. That's what we're on.</p> <p>9 BY MR. DUNNEGAN:</p> <p>10 Q. Okay. Is there anything that you can</p> <p>11 determine from 310A, and specifically the tab "PLN Sales</p> <p>12 Volume," that tells you where in the store these</p> <p>13 Infinitive products were sold from?</p> <p>14 MS. BLACKBURN: Object to form.</p> <p>15 BY THE WITNESS:</p> <p>16 A. No, there's nothing on this report that</p> <p>17 represents that.</p> <p>18 BY MR. DUNNEGAN:</p> <p>19 Q. And if I asked you the same question about the</p> <p>20 next tab which is "Store WIC Sales," is there anything</p> <p>21 in that spreadsheet which would indicate the location at</p> <p>22 which these products were sold in the Walgreen stores?</p> <p>23 MS. BLACKBURN: Object to form.</p> <p>24</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. Does that represent a retail price or some</p> <p>2 other price?</p> <p>3 MS. BLACKBURN: Object to form and foundation.</p> <p>4 BY THE WITNESS:</p> <p>5 A. So from the looks of it --</p> <p>6 BY MR. DUNNEGAN:</p> <p>7 Q. Let me withdraw that question.</p> <p>8 A. Okay.</p> <p>9 Q. What does that number \$1,644,170 represent?</p> <p>10 MS. BLACKBURN: Object to foundation.</p> <p>11 BY THE WITNESS:</p> <p>12 A. So I don't remember this particular report,</p> <p>13 but on a similar type of report data and on many, many,</p> <p>14 many of those, it would represent the amount of shrink</p> <p>15 associated with a particular line of product.</p> <p>16 BY MR. DUNNEGAN:</p> <p>17 Q. But how would the cost of a dollar of product</p> <p>18 be determined?</p> <p>19 MS. BLACKBURN: Object to foundation.</p> <p>20 BY THE WITNESS:</p> <p>21 A. There's no cost associated with it. It's</p> <p>22 strictly shrink levels, and shrink is theft. That's how</p> <p>23 much of the particular product line was disappeared from</p> <p>24 the store, stolen in some cases or broken during</p>



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<p style="text-align: right;">Page 45</p> <p>1 inventory, realignment, and whatnot.</p> <p>2 BY MR. DUNNEGAN:</p> <p>3 Q. Right. But would the cost of the product that</p> <p>4 shall be determined at its retail value, at the value</p> <p>5 that Walgreen paid for it, or some other amount?</p> <p>6 MS. BLACKBURN: Object to foundation.</p> <p>7 BY THE WITNESS:</p> <p>8 A. I do not recall the exact methodology on the</p> <p>9 data.</p> <p>10 BY MR. DUNNEGAN:</p> <p>11 Q. Do you have any information in that respect</p> <p>12 you that you recall?</p> <p>13 A. No. I would need a refresher.</p> <p>14 MR. DUNNEGAN: Now, if we could put in front of</p> <p>15 the witness Exhibit 311. Please tell me when you</p> <p>16 have it.</p> <p>17 (WHEREUPON, Plaintiff's Deposition</p> <p>18 Exhibit No. 311 was introduced into</p> <p>19 the record.)</p> <p>20 THE WITNESS: Okay. I just got it.</p> <p>21 BY MR. DUNNEGAN:</p> <p>22 Q. What is Exhibit 311?</p> <p>23 MS. BLACKBURN: Object to form.</p> <p>24</p>	<p style="text-align: right;">Page 47</p> <p>1 MS. BLACKBURN: Object to form and foundation.</p> <p>2 BY THE WITNESS:</p> <p>3 A. I do not.</p> <p>4 MR. DUNNEGAN: Now, let me ask the court</p> <p>5 reporter to put in front of you Exhibit 313.</p> <p>6 (WHEREUPON, Plaintiff's Deposition</p> <p>7 Exhibit No. 313 was introduced into</p> <p>8 the record.)</p> <p>9 BY MR. DUNNEGAN:</p> <p>10 Q. Do you have it?</p> <p>11 A. Yes, I do.</p> <p>12 Q. What is that?</p> <p>13 MS. BLACKBURN: Object to form.</p> <p>14 BY THE WITNESS:</p> <p>15 A. It looks like another email.</p> <p>16 BY MR. DUNNEGAN:</p> <p>17 Q. Do you recall receiving this email?</p> <p>18 A. I do not recall that.</p> <p>19 Q. Do you have any doubt that you did receive</p> <p>20 this email?</p> <p>21 A. Not based on the evidence in front of me.</p> <p>22 Q. Did you have any conversation with anyone at</p> <p>23 Walgreen about this email?</p> <p>24 MS. BLACKBURN: Object to form and foundation.</p>
<p style="text-align: right;">Page 46</p> <p>1 BY THE WITNESS:</p> <p>2 A. It looks like an email.</p> <p>3 BY MR. DUNNEGAN:</p> <p>4 Q. Do you recall receiving that email?</p> <p>5 A. I do not recall that.</p> <p>6 Q. Is there any doubt that you did receive this</p> <p>7 email?</p> <p>8 A. Not based on what I'm seeing in front of me.</p> <p>9 Q. Now, do you recall in the April 2019 timeframe</p> <p>10 having any conversation with any representative or</p> <p>11 employee of Zeikos?</p> <p>12 A. No, I do not.</p> <p>13 Q. Now, this exhibit provides, "Elena - Thank you</p> <p>14 for the information! Would you have time for a quick</p> <p>15 call today?" In your ordinary practice back in the</p> <p>16 April 2019 timeframe, would you call somebody in</p> <p>17 response to this or would you not call somebody in</p> <p>18 response to this?</p> <p>19 MS. BLACKBURN: Object to form.</p> <p>20 BY THE WITNESS:</p> <p>21 A. Generally I would call.</p> <p>22 BY MR. DUNNEGAN:</p> <p>23 Q. Do you have any reason to believe that you did</p> <p>24 not call in response to this email?</p>	<p style="text-align: right;">Page 48</p> <p>1 BY THE WITNESS:</p> <p>2 A. I don't remember at this time.</p> <p>3 BY MR. DUNNEGAN:</p> <p>4 Q. Do you have a recollection of doing anything</p> <p>5 in connection with Zeikos after you received a bid from</p> <p>6 Zeikos in connection with the Infinitive program?</p> <p>7 A. No.</p> <p>8 Q. Do you recall receiving any bid from any other</p> <p>9 company for the Infinitive program?</p> <p>10 A. I do not.</p> <p>11 Q. Do you have any reason to believe that there</p> <p>12 were other bids to Walgreen for the Infinitive program?</p> <p>13 MS. BLACKBURN: Object to form and foundation.</p> <p>14 BY THE WITNESS:</p> <p>15 A. No.</p> <p>16 MR. DUNNEGAN: Let me ask our court reporter to</p> <p>17 show you what's been marked as Exhibit 315.</p> <p>18 (WHEREUPON, Plaintiff's Deposition</p> <p>19 Exhibit No. 315 was introduced into</p> <p>20 the record.)</p> <p>21 THE WITNESS: I have it.</p> <p>22 BY MR. DUNNEGAN:</p> <p>23 Q. Now, what is Exhibit 315?</p> <p>24 MS. BLACKBURN: Object to form.</p>

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<p style="text-align: right;">Page 49</p> <p>1 BY THE WITNESS:</p> <p>2 A. Another email.</p> <p>3 BY MR. DUNNEGAN:</p> <p>4 Q. Did you send this email?</p> <p>5 A. It looks like I did.</p> <p>6 Q. Do you have any doubt that you did?</p> <p>7 A. No.</p> <p>8 MR. DUNNEGAN: Now, let me ask our court</p> <p>9 reporter to show you what's been marked</p> <p>10 Exhibit 315A.</p> <p>11 (WHEREUPON, Plaintiff's Deposition</p> <p>12 Exhibit No. 315A was introduced into</p> <p>13 the record.)</p> <p>14 THE WITNESS: I have it.</p> <p>15 BY MR. DUNNEGAN:</p> <p>16 Q. And what is Exhibit 315A?</p> <p>17 MS. BLACKBURN: Object to form.</p> <p>18 BY THE WITNESS:</p> <p>19 A. It looks like a standard inventory report.</p> <p>20 BY MR. DUNNEGAN:</p> <p>21 Q. And was Exhibit 315A attached, as best as you</p> <p>22 can recall, to the email which is the last in the chain</p> <p>23 on Exhibit 315?</p> <p>24 A. I'm not sure.</p>	<p style="text-align: right;">Page 51</p> <p>1 BY MR. DUNNEGAN:</p> <p>2 Q. 310D next column says, "FY Budget." Do you</p> <p>3 see that?</p> <p>4 A. I do.</p> <p>5 Q. What does that refer to?</p> <p>6 MS. BLACKBURN: Object to form and foundation.</p> <p>7 BY THE WITNESS:</p> <p>8 A. I'm not sure.</p> <p>9 BY MR. DUNNEGAN:</p> <p>10 Q. Do you know how those numbers got filled in?</p> <p>11 MS. BLACKBURN: Object to foundation.</p> <p>12 BY THE WITNESS:</p> <p>13 A. My assumption is that the reports in a</p> <p>14 standard format like that were a download from our</p> <p>15 dashboard for report generation.</p> <p>16 BY MR. DUNNEGAN:</p> <p>17 Q. You said dashboard; is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. What does that mean?</p> <p>20 A. It's a program or interface we use for data</p> <p>21 tracking and reporting for particular periods of time</p> <p>22 and types of products.</p> <p>23 Q. And do you know who, either by individual or</p> <p>24 department, that would create the numbers that go into</p>
<p style="text-align: right;">Page 50</p> <p>1 Q. I mean, looking at it now, would you call</p> <p>2 Plaintiff's Exhibit 315A an inventory positioning form?</p> <p>3 A. It could be but I'm not sure.</p> <p>4 Q. Do you have any reason to believe that</p> <p>5 Exhibit 315A was not attached as an attachment to the</p> <p>6 last email in the chain on Exhibit 315?</p> <p>7 MS. BLACKBURN: Object to form and foundation.</p> <p>8 BY THE WITNESS:</p> <p>9 A. I don't have much of a recollection of what</p> <p>10 happened at that time. I can't really confirm or deny.</p> <p>11 BY MR. DUNNEGAN:</p> <p>12 Q. Okay. Let's take a look at the top row of</p> <p>13 Plaintiff's Exhibit 315A. And, again, what does the</p> <p>14 PLN (Actuals) mean on that row?</p> <p>15 MS. BLACKBURN: Object to form and foundation.</p> <p>16 BY THE WITNESS:</p> <p>17 A. It's the planogram number or an item number.</p> <p>18 BY MR. DUNNEGAN:</p> <p>19 Q. Okay. And then on Exhibit 315A under</p> <p>20 Description, what is that?</p> <p>21 MS. BLACKBURN: Object to form and foundation.</p> <p>22 BY THE WITNESS:</p> <p>23 A. Description of the product.</p> <p>24</p>	<p style="text-align: right;">Page 52</p> <p>1 FY Budget?</p> <p>2 A. I'm not sure.</p> <p>3 Q. Now, based upon Exhibit 315A, is there any way</p> <p>4 to determine the amount of Walgreen's retail sales of</p> <p>5 Infinitive brand products?</p> <p>6 A. I don't think so.</p> <p>7 Q. And based upon Exhibit 315A, is there any way</p> <p>8 to determine which part of the Walgreen stores these</p> <p>9 Infinitive brand products were sold from?</p> <p>10 A. No.</p> <p>11 MR. DUNNEGAN: Now, let me ask our court</p> <p>12 reporter to show you what's been marked as Exhibit</p> <p>13 318. And please tell me when you have it.</p> <p>14 (WHEREUPON, Plaintiff's Deposition</p> <p>15 Exhibit No. 318 was introduced into</p> <p>16 the record.)</p> <p>17 THE WITNESS: I have it.</p> <p>18 BY MR. DUNNEGAN:</p> <p>19 Q. What is Exhibit 318?</p> <p>20 MS. BLACKBURN: Object to form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. It looks like an email.</p> <p>23 BY MR. DUNNEGAN:</p> <p>24 Q. And is the top email or the most recent email</p>

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<p style="text-align: right;">Page 53</p> <p>1 in the chain an email that you sent?</p> <p>2 A. Yes.</p> <p>3 Q. Now, I'm going to ask you to look down the</p> <p>4 document to the earlier emails in the chain.</p> <p>5 A. Okay. I'm looking at it.</p> <p>6 Q. Now, on the next-to-last page of the document</p> <p>7 which has the number on the bottom Z004723, do you see</p> <p>8 the email from Jim Trappani to you and Jason from</p> <p>9 May 1st of 2019?</p> <p>10 A. Yes, I see it.</p> <p>11 Q. And he says, "I am working on an analysis for</p> <p>12 the and I am missing sales data for the attached items.</p> <p>13 I have the inventory numbers, but not the sales. Can</p> <p>14 you please send?"</p> <p>15 A. I see it.</p> <p>16 Q. Do you remember receiving that email?</p> <p>17 A. I do not remember.</p> <p>18 Q. Do you have any doubt that you received that</p> <p>19 email?</p> <p>20 MS. BLACKBURN: Object to form and foundation.</p> <p>21 BY THE WITNESS:</p> <p>22 A. I don't. I have that in front of me.</p> <p>23 BY MR. DUNNEGAN:</p> <p>24 Q. Now, if we look at the second page of the</p>	<p style="text-align: right;">Page 55</p> <p>1 BY THE WITNESS:</p> <p>2 A. I do not recall that, but based on the email,</p> <p>3 it looks like I did.</p> <p>4 BY MR. DUNNEGAN:</p> <p>5 Q. Did you end up doing that?</p> <p>6 A. I'm not sure.</p> <p>7 Q. Did you recall receiving an email from</p> <p>8 Mr. Santiago on May 3rd at 11:13 a.m.?</p> <p>9 MS. BLACKBURN: I'm sorry. You broke up a</p> <p>10 little. Can you repeat it?</p> <p>11 MR. DUNNEGAN: I'll rewind it.</p> <p>12 MS. BLACKBURN: Sorry.</p> <p>13 BY MR. DUNNEGAN:</p> <p>14 Q. Do you recall receiving from Mr. Santiago the</p> <p>15 email from May 3rd, 2019 at 11:13 a.m. which is on</p> <p>16 Page 1 of the document, Exhibit 318?</p> <p>17 A. I see it but I do not recall it.</p> <p>18 Q. Now, do you recall having a conversation with</p> <p>19 anyone at Walgreen about whether or not you should send</p> <p>20 the sales data?</p> <p>21 A. I do not remember that.</p> <p>22 Q. Now, do you have any recollection that you</p> <p>23 actually sent to Jim the sales data that you promised to</p> <p>24 send on the morning of May 2nd, 2019?</p>
<p style="text-align: right;">Page 54</p> <p>1 document that has Z004722 on it, is that an email that</p> <p>2 you sent to Jim Trappani and Jason Santiago on May 2nd</p> <p>3 at about 10:24 a.m.?</p> <p>4 A. It looks like it. Yes, I see it.</p> <p>5 Q. And you wrote to Jim, "I'll send it this</p> <p>6 afternoon." Is that correct?</p> <p>7 A. Yes, it's correct.</p> <p>8 Q. Now, what does the "it" refer to?</p> <p>9 MS. BLACKBURN: Object to form and foundation.</p> <p>10 BY THE WITNESS:</p> <p>11 A. I'm not sure. I'll have to go back to the</p> <p>12 initial email again.</p> <p>13 BY MR. DUNNEGAN:</p> <p>14 Q. You take your time.</p> <p>15 A. It refers to the data Jim is asking to send.</p> <p>16 Q. And that would be the sales numbers, right?</p> <p>17 MS. BLACKBURN: Object to form and foundation.</p> <p>18 BY THE WITNESS:</p> <p>19 A. That's what he's asking for.</p> <p>20 BY MR. DUNNEGAN:</p> <p>21 Q. So as of the time of your email on May 2nd of</p> <p>22 2019 at 10:24 a.m., you intended to send Jim the sales</p> <p>23 numbers for the Infinitive products, right?</p> <p>24 MS. BLACKBURN: Object to form and foundation.</p>	<p style="text-align: right;">Page 56</p> <p>1 MS. BLACKBURN: Object to form.</p> <p>2 BY THE WITNESS:</p> <p>3 A. No.</p> <p>4 BY MR. DUNNEGAN:</p> <p>5 Q. And did you send the sales data to</p> <p>6 Mr. Trappani of Zeikos on the afternoon of May 2nd,</p> <p>7 2019?</p> <p>8 MS. BLACKBURN: Object to form.</p> <p>9 BY THE WITNESS:</p> <p>10 A. I'm not sure.</p> <p>11 BY MR. DUNNEGAN:</p> <p>12 Q. You have no recollection of doing so, correct?</p> <p>13 A. Correct.</p> <p>14 Q. Is it your usual practice to do what you</p> <p>15 promise to do?</p> <p>16 MS. BLACKBURN: Object to form.</p> <p>17 BY THE WITNESS:</p> <p>18 A. Yes, as a human being and a professional.</p> <p>19 BY MR. DUNNEGAN:</p> <p>20 Q. And was that your practice back in the May</p> <p>21 2019 timeframe?</p> <p>22 MS. BLACKBURN: Object to form.</p> <p>23 BY THE WITNESS:</p> <p>24 A. I hope so.</p>

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<p style="text-align: right;">Page 57</p> <p>1 BY MR. DUNNEGAN:</p> <p>2 Q. Now, after receiving the email from</p> <p>3 Mr. Santiago on May 3rd of 2019, you did send another</p> <p>4 email to Mr. Trappani and others on May 3rd at</p> <p>5 12:20 p.m., correct?</p> <p>6 MS. BLACKBURN: Object to form and foundation.</p> <p>7 BY THE WITNESS:</p> <p>8 A. Based on what I see in front of me, yes.</p> <p>9 BY MR. DUNNEGAN:</p> <p>10 Q. And you sent the inventory positioning,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 MR. DUNNEGAN: Now I'd like to ask our court</p> <p>14 reporter to please place in front of the witness</p> <p>15 Exhibit 318A. And please tell me when you have it.</p> <p>16 (WHEREUPON, Plaintiff's Deposition</p> <p>17 Exhibit No. 318A was introduced into</p> <p>18 the record.)</p> <p>19 BY MR. DUNNEGAN:</p> <p>20 Q. What is Exhibit 318A?</p> <p>21 MS. BLACKBURN: Object to form.</p> <p>22 BY THE WITNESS:</p> <p>23 A. Okay. I have it.</p> <p>24 MS. BLACKBURN: Bill, I don't think the witness</p>	<p style="text-align: right;">Page 59</p> <p>1 A. There is an Estimate Annual Quantity column</p> <p>2 next to the product, current product description.</p> <p>3 Q. And do you know who created that estimated</p> <p>4 annual quantity?</p> <p>5 A. I do not. This doesn't look like a standard</p> <p>6 report.</p> <p>7 Q. I'm sorry. Could you please repeat your</p> <p>8 answer? I didn't hear it.</p> <p>9 A. I'm not sure what is the methodology behind</p> <p>10 this calculation. It does not look standard.</p> <p>11 Q. It does not look standard, correct?</p> <p>12 A. Correct. I could be wrong.</p> <p>13 Q. Why does it not look standard?</p> <p>14 A. I do not recognize all of the columns. But</p> <p>15 it's been a long time, as I said.</p> <p>16 Q. Now, is there any doubt in your mind that</p> <p>17 Exhibit 318A was the attachment to the last email on</p> <p>18 Exhibit 318?</p> <p>19 MS. BLACKBURN: Object to form and foundation.</p> <p>20 BY THE WITNESS:</p> <p>21 A. I do not recall sending that email so it's</p> <p>22 difficult to tell.</p> <p>23 BY MR. DUNNEGAN:</p> <p>24 Q. Do you have any reason to believe that Exhibit</p>
<p style="text-align: right;">Page 58</p> <p>1 heard your question.</p> <p>2 BY MR. DUNNEGAN:</p> <p>3 Q. What is Exhibit 318A?</p> <p>4 MS. BLACKBURN: Object to form.</p> <p>5 BY THE WITNESS:</p> <p>6 A. I do not remember it. Based on what I'm</p> <p>7 seeing, it shows monthly sell-through numbers and how</p> <p>8 much of supply of the particular item we have.</p> <p>9 BY MR. DUNNEGAN:</p> <p>10 Q. Looking at Exhibit 318A, is there any way</p> <p>11 anyone could determine the amount of Walgreen sales of</p> <p>12 Infinitive brand product based upon it?</p> <p>13 MS. BLACKBURN: Object to form.</p> <p>14 BY THE WITNESS:</p> <p>15 A. Are you referring to quantities or dollars?</p> <p>16 BY MR. DUNNEGAN:</p> <p>17 Q. Dollars.</p> <p>18 A. No.</p> <p>19 Q. What about quantities?</p> <p>20 A. Potentially. It's an estimation.</p> <p>21 Q. Well, you said it's an estimation.</p> <p>22 A. Correct.</p> <p>23 Q. How would one estimate the quantity based upon</p> <p>24 the document 318A?</p>	<p style="text-align: right;">Page 60</p> <p>1 318A was not the attachment to Exhibit 318?</p> <p>2 MS. BLACKBURN: Object to form.</p> <p>3 BY THE WITNESS:</p> <p>4 A. I don't have an opinion on that.</p> <p>5 BY MR. DUNNEGAN:</p> <p>6 Q. Is the estimated annual quantity as set forth</p> <p>7 in the top of column 318A an estimate of your past</p> <p>8 annual quantities or your future annual quantities?</p> <p>9 MS. BLACKBURN: Object to foundation.</p> <p>10 BY THE WITNESS:</p> <p>11 A. I'm not sure since I don't recognize this</p> <p>12 data.</p> <p>13 BY MR. DUNNEGAN:</p> <p>14 Q. Now, going back to Exhibit 318, do you have</p> <p>15 any explanation as to why you did not send the sales</p> <p>16 data for the Infinitive product to Zeikos?</p> <p>17 MS. BLACKBURN: Object to form and foundation.</p> <p>18 BY THE WITNESS:</p> <p>19 A. I don't have any information on that.</p> <p>20 BY MR. DUNNEGAN:</p> <p>21 Q. You have no explanation for why you didn't do</p> <p>22 that?</p> <p>23 A. Correct.</p> <p>24 MS. BLACKBURN: Object to form and foundation.</p>

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<p style="text-align: right;">Page 61</p> <p>1 MR. DUNNEGAN: What's your objection to form or</p> <p>2 foundation, Rachael?</p> <p>3 MS. BLACKBURN: The foundation objection is she</p> <p>4 said she doesn't remember whether she did or did</p> <p>5 not send it. So you're asking her why she would</p> <p>6 not have sent it and she has already said that she</p> <p>7 doesn't recall if she sent it one way or the other.</p> <p>8 The form is that you are assuming that she did not</p> <p>9 send it when that has not been established. So</p> <p>10 those are the bases of my objections.</p> <p>11 MR. DUNNEGAN: Okay.</p> <p>12 BY MR. DUNNEGAN:</p> <p>13 Q. Right now you have no recollection of sending</p> <p>14 the sales data for Walgreen's Infinitive products to</p> <p>15 Zeikos, correct?</p> <p>16 A. That is correct.</p> <p>17 Q. Did you speak with anyone after sending your</p> <p>18 email of April 2nd, 2019 at 10:24 a.m. which said "I'll</p> <p>19 send it this afternoon" about whether or not you should</p> <p>20 send it?</p> <p>21 MS. BLACKBURN: Object to form. I think you</p> <p>22 had the wrong date in there. Do you mind -- I</p> <p>23 think you said it was April and it's May. Do you</p> <p>24 mind just reasking so it's clear?</p>	<p style="text-align: right;">Page 63</p> <p>1 BY THE WITNESS:</p> <p>2 A. I don't think I can. It depended on what the</p> <p>3 project required.</p> <p>4 BY MR. DUNNEGAN:</p> <p>5 Q. Do you have any recollection at all of</p> <p>6 speaking with Mr. Santiago about the Infinitive product</p> <p>7 310D program that you were trying to solicit bids for?</p> <p>8 A. Unfortunately I do not.</p> <p>9 Q. Do you have any recollection of speaking with</p> <p>10 anyone else at Walgreen about soliciting bids for the</p> <p>11 Infinitive product?</p> <p>12 A. I do not.</p> <p>13 Q. Do you remember receiving any instructions</p> <p>14 from anyone about what you were to do in connection with</p> <p>15 soliciting bids for the Infinitive product beyond the</p> <p>16 emails which we've marked today?</p> <p>17 A. No, I do not remember.</p> <p>18 MR. DUNNEGAN: Can I please ask the court</p> <p>19 reporter to hand the witness Exhibit 9.</p> <p>20 (WHEREUPON, Plaintiff's Deposition</p> <p>21 Exhibit No. 9 was introduced into</p> <p>22 the record.)</p> <p>23 THE WITNESS: I have it.</p> <p>24</p>
<p style="text-align: right;">Page 62</p> <p>1 MR. DUNNEGAN: Certainly.</p> <p>2 MS. BLACKBURN: Thank you.</p> <p>3 BY MR. DUNNEGAN:</p> <p>4 Q. Do you have any recollection of speaking with</p> <p>5 anyone after you sent your email of May 2nd, 2019 at</p> <p>6 10:24 a.m. which appears on the page numbered Z004722</p> <p>7 about whether to send the sales data as you promised?</p> <p>8 MS. BLACKBURN: Object to form.</p> <p>9 BY THE WITNESS:</p> <p>10 A. I don't have any recollection.</p> <p>11 BY MR. DUNNEGAN:</p> <p>12 Q. How often in the course of a day would you</p> <p>13 speak with Mr. Santiago?</p> <p>14 MS. BLACKBURN: Object to form.</p> <p>15 BY MR. DUNNEGAN:</p> <p>16 Q. In that timeframe.</p> <p>17 BY THE WITNESS:</p> <p>18 A. Okay. It's difficult to establish. I've</p> <p>19 supported multiple sourcing managers.</p> <p>20 BY MR. DUNNEGAN:</p> <p>21 Q. I mean, would you speak to him once a week,</p> <p>22 once a day, five times a day? Can you give me some</p> <p>23 estimate?</p> <p>24 MS. BLACKBURN: Object to form.</p>	<p style="text-align: right;">Page 64</p> <p>1 BY MR. DUNNEGAN:</p> <p>2 Q. What is Exhibit 9?</p> <p>3 A. It's an email.</p> <p>4 Q. And is it an email that you received, at the</p> <p>5 top?</p> <p>6 MS. BLACKBURN: Object to form.</p> <p>7 BY THE WITNESS:</p> <p>8 A. It looks like it, based on the date.</p> <p>9 BY MR. DUNNEGAN:</p> <p>10 Q. Do you recall receiving it?</p> <p>11 A. I do not recall receiving it.</p> <p>12 Q. Now, it says, "Elena thanks for the info -</p> <p>13 very big differences from the other data that was sent</p> <p>14 previously. I want to double confirm the attached</p> <p>15 numbers are accurate, since we are analyzing a very big</p> <p>16 program and we need to be 100% accurate to bring forward</p> <p>17 the right proposal." Do you see that?</p> <p>18 A. I do see that.</p> <p>19 Q. Do you have any recollection of wondering</p> <p>20 whether or not the data that you provided to Zeikos in</p> <p>21 your earlier emails was accurate?</p> <p>22 A. I do not have that recollection.</p> <p>23 Q. Do you recall anything that you did in</p> <p>24 connection with Zeikos after May 3rd, 2019 at about</p>



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<p style="text-align: right;">Page 65</p> <p>1 1:00 p.m.?</p> <p>2 A. No.</p> <p>3 Q. Now, after May 3rd, 2019 at about 1:00 p.m.,</p> <p>4 do you have any recollection of doing anything else on</p> <p>5 the Infinitive program?</p> <p>6 A. No.</p> <p>7 Q. Do you have any recollection of responding to</p> <p>8 any email from Zeikos questioning the accuracy of any</p> <p>9 data that you had previously provided?</p> <p>10 A. I do not.</p> <p>11 Q. Now, looking at Exhibit 9, back in the May</p> <p>12 2019 timeframe, would it be your usual practice not to</p> <p>13 respond to an email such as the one Jim Trappani of</p> <p>14 Zeikos wrote to you on May 3rd at about 1:00 p.m.?</p> <p>15 MS. BLACKBURN: Object to form.</p> <p>16 BY THE WITNESS:</p> <p>17 A. I don't think it would be my usual practice.</p> <p>18 BY MR. DUNNEGAN:</p> <p>19 Q. So to clarify -- (inaudible)</p> <p>20 MS. BLACKBURN: Bill, I'm sorry. You broke up</p> <p>21 when you started your second -- reframing it.</p> <p>22 Sorry.</p> <p>23 MR. DUNNEGAN: Sure, no problem. I want you to</p> <p>24 hear me.</p>	<p style="text-align: right;">Page 67</p> <p>1 MS. BLACKBURN: Object to form.</p> <p>2 BY THE WITNESS:</p> <p>3 A. I do not remember.</p> <p>4 BY MR. DUNNEGAN:</p> <p>5 Q. Now, typically when you were sourcing a</p> <p>6 product from a manufacturer, would Walgreen generally</p> <p>7 have a projection or a forecast of the amount of that</p> <p>8 item it was considering purchasing?</p> <p>9 A. Typically, yes.</p> <p>10 Q. Do you know whether or not Walgreen at any</p> <p>11 time had any projection for any Infinitive brand product</p> <p>12 that it intended to purchase from a manufacturer?</p> <p>13 MS. BLACKBURN: Object to form.</p> <p>14 BY THE WITNESS:</p> <p>15 A. I'm not sure.</p> <p>16 BY MR. DUNNEGAN:</p> <p>17 Q. But if Walgreen followed its usual practice,</p> <p>18 it would have projections of what it intended to</p> <p>19 purchase with the Infinitive brand name on it, right?</p> <p>20 MS. BLACKBURN: Object to form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. I can't make that assumption.</p> <p>23 BY MR. DUNNEGAN:</p> <p>24 Q. Do you know an individual by the name of</p>
<p style="text-align: right;">Page 66</p> <p>1 BY MR. DUNNEGAN:</p> <p>2 Q. Are you saying that it would have been your</p> <p>3 usual practice in the May 2019 timeframe to respond to</p> <p>4 an email of a vendor rather than ignore it?</p> <p>5 MS. BLACKBURN: Object to form.</p> <p>6 BY THE WITNESS:</p> <p>7 A. It is never my usual practice but I do not</p> <p>8 recall what happened in this particular situation.</p> <p>9 BY MR. DUNNEGAN:</p> <p>10 Q. So your usual practice in the May 2019</p> <p>11 timeframe would be to respond to an email of a vendor,</p> <p>12 correct?</p> <p>13 MS. BLACKBURN: Object to form.</p> <p>14 BY THE WITNESS:</p> <p>15 A. Usual practice would be to respond.</p> <p>16 BY MR. DUNNEGAN:</p> <p>17 Q. And sitting here today you don't know whether</p> <p>18 or not you responded?</p> <p>19 A. Correct.</p> <p>20 Q. Now, do you recall having any information</p> <p>21 about whether or not in the April or May 2019 timeframe</p> <p>22 that Walgreen had projections of its purchases from a</p> <p>23 manufacturer of products under the Infinitive brand</p> <p>24 name?</p>	<p style="text-align: right;">Page 68</p> <p>1 Albert Gehrke?</p> <p>2 A. I recall his name but I don't think I've met</p> <p>3 him personally.</p> <p>4 Q. Have you ever emailed with him?</p> <p>5 A. I don't believe I did. Definitely not</p> <p>6 directly.</p> <p>7 Q. And when you say "definitely not directly" you</p> <p>8 mean it's possible that somebody forwarded an email of</p> <p>9 Mr. Gehrke to you or forwarded one of your emails to</p> <p>10 Mr. Gehrke and you wouldn't know about it?</p> <p>11 A. Correct.</p> <p>12 MS. BLACKBURN: Object to form.</p> <p>13 BY THE WITNESS:</p> <p>14 A. Correct. I mean, I don't have a way of</p> <p>15 knowing that.</p> <p>16 BY MR. DUNNEGAN:</p> <p>17 Q. Sure. Do you know anyone by the name of Ivone</p> <p>18 Flores?</p> <p>19 A. No.</p> <p>20 Q. Now, to the best of your recollection, did</p> <p>21 anyone ever communicate to you an instruction and say it</p> <p>22 was based upon the statement of Mr. Gehrke?</p> <p>23 MS. BLACKBURN: Object to form.</p> <p>24</p>



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<p style="text-align: right;">Page 69</p> <p>1 BY THE WITNESS:</p> <p>2 A. I'm not sure.</p> <p>3 BY MR. DUNNEGAN:</p> <p>4 Q. And just to make sure that we're on the same</p> <p>5 wavelength, did anybody that you recall ever come to you</p> <p>6 and say, "Hey, we need you to do this because Albert</p> <p>7 Gehrke says he needs it"? Do you recall anything like</p> <p>8 that?</p> <p>9 A. I do not recall that.</p> <p>10 Q. Now, at some point you stopped working on the</p> <p>11 Infinitive product or soliciting bids for the Infinitive</p> <p>12 program, right?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know how soon after May 3rd of 2019</p> <p>15 that you stopped? And then to come up with that date,</p> <p>16 I'm looking at Exhibit 9.</p> <p>17 A. I do not recall that, but I was in and out of</p> <p>18 the different projects by sourcing managers as needed.</p> <p>19 Q. Do you recall anybody telling you to stop work</p> <p>20 on the Infinitive sourcing project?</p> <p>21 A. No.</p> <p>22 Q. Do you have any explanation for why you</p> <p>23 stopped work on it?</p> <p>24 A. I don't recall whether I stopped or not.</p>	<p style="text-align: right;">Page 71</p> <p>1 communication to or from anyone at Zeikos was Exhibit 9</p> <p>2 which is dated May 3rd of 2019, correct?</p> <p>3 MS. BLACKBURN: Object to form and foundation.</p> <p>4 BY THE WITNESS:</p> <p>5 A. I'm not sure. I mean, I only see the exhibit</p> <p>6 in front of me. I don't see any further exhibits.</p> <p>7 BY MR. DUNNEGAN:</p> <p>8 Q. Well, do you remember any communication to or</p> <p>9 from Zeikos after May 3rd, 2019 at about 1:00 p.m.?</p> <p>10 A. No.</p> <p>11 Q. As of May 3rd, 2019 at 1:00 p.m., did you know</p> <p>12 the amount of the sales of Infinitive products of</p> <p>13 Walgreen in the prior year?</p> <p>14 A. I'm not sure.</p> <p>15 Q. Why aren't you sure?</p> <p>16 A. Since I don't remember all of that</p> <p>17 correspondence or details of that project, it's hard to</p> <p>18 tell at this time.</p> <p>19 Q. As of May 3rd, 2019 at 1:00 p.m., did you have</p> <p>20 any knowledge as to the amount of sales of Infinitive</p> <p>21 product that Walgreen had made from any specific place</p> <p>22 in a Walgreen store?</p> <p>23 MS. BLACKBURN: Object to form.</p> <p>24</p>
<p style="text-align: right;">Page 70</p> <p>1 Q. Well, do you recall anything you did on the</p> <p>2 Infinitive sourcing project after 1:00 p.m. on May 3rd,</p> <p>3 2019?</p> <p>4 A. No.</p> <p>5 Q. Now, after May 3rd of 2019, do you recall</p> <p>6 having any conversation with Mr. Santiago concerning the</p> <p>7 Infinitive sourcing project?</p> <p>8 A. I do not recall that.</p> <p>9 Q. After May 3rd of 2019, do you have any</p> <p>10 recollection of communicating with anyone from Walgreen</p> <p>11 about the Infinitive sourcing project?</p> <p>12 A. No.</p> <p>13 Q. So as of May 13, 2019, your communications</p> <p>14 with Zeikos ended, correct?</p> <p>15 MS. BLACKBURN: Object to form and foundation.</p> <p>16 BY THE WITNESS:</p> <p>17 A. Since I don't recall this communication, I</p> <p>18 don't remember when it ended. The email is dated</p> <p>19 May 3rd and you said May 13. Can you clarify that?</p> <p>20 BY MR. DUNNEGAN:</p> <p>21 Q. Oh, my mistake. I may have misspoke. I</p> <p>22 apologize.</p> <p>23 A. Okay.</p> <p>24 Q. To the best of your recollection, your last</p>	<p style="text-align: right;">Page 72</p> <p>1 BY THE WITNESS:</p> <p>2 A. No.</p> <p>3 MR. DUNNEGAN: Excuse me for one second. I'm</p> <p>4 just going to take a one-minute break and speak</p> <p>5 with Laura, if you don't mind.</p> <p>6 MS. BLACKBURN: Okay. We'll just turn our --</p> <p>7 we'll mute ourselves.</p> <p>8 (WHEREUPON, a recess was had.)</p> <p>9 MR. DUNNEGAN: Okay. We don't have any more</p> <p>10 questions for this witness at this time.</p> <p>11 MS. BLACKBURN: All right. I have no questions</p> <p>12 either.</p> <p>13 THE REPORTER: Signature?</p> <p>14 MS. BLACKBURN: We'll reserve signature.</p> <p>15 (WHEREUPON, the deposition</p> <p>16 concluded at 11:00 a.m.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>